

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

**ANDREW WILLIAM SMITH & LISA
VELTEN-SMITH,**

**On Behalf of Themselves and All Others
Similarly Situated,**

Plaintiffs,

v.

**WELLS FARGO & COMPANY,
WELLS FARGO BANK, N.A.
And Does 1 through 20,**

Defendants.

Civil Action No. 1:08 cv-00564 (LAK)

PARTIAL MOTION TO DISMISS

Defendants Wells Fargo Bank & Company and Wells Fargo Bank, N.A. hereby move to dismiss the Second and Third Causes of Action of Plaintiffs' Complaint *with prejudice* pursuant to Federal Rule of Civil Procedure 12(b)(6).¹ As set forth more fully in the accompanying Memorandum of Law in Support of Partial Motion to Dismiss, Plaintiffs' state law claims are subject to dismissal because the second cause of action does not provide a private right of action for the claims alleged, and both the second and third causes of action are preempted by federal law.

¹ Defendants informed Plaintiffs of their intent to file this Motion at the parties' Rule 26(f) conference on February 26, 2008 and again at the February 28, 2008 Scheduling Conference before the Court. Defendants have not further conferred with Plaintiffs regarding the Motion.

Respectfully submitted,

WELLS FARGO & COMPANY,
WELLS FARGO BANK, N.A.

By their attorneys,

/s/ Brian D. Hail
Brian D. Hail (BH - 1857)
GOODWIN PROCTER, LLP
599 Lexington Avenue,
New York, NY 10022
(212) 813-8800 (telephone)
(212) 355-3333 (facsimile)
bhail@goodwinprocter.com

Thomas M. Hefferon (*pro hac vice*)
Marva R. Deskins (not admitted *pro hac vice*)
GOODWIN PROCTER, LLP
901 New York Ave., N.W.
Washington, D.C. 20001
(202) 346-4000 (telephone)
(202) 344-4444 (facsimile)
thefferon@goodwinprocter.com

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